

BEFORE THE ARIZONA CORPORATION COMMISSION

Commissioner

DOCKETED BY

AZ CORP COMMISSION
DOCUMENT CONTROL

**IN THE MATTER OF ILEC UNBUNDLING
OBLIGATIONS AS A RESULT OF THE
FEDERAL TRIENNIAL REVIEW ORDER**

Docket No. T-00000A-03-0369

At this point in time, AT&T does not expect to initiate, or be involved in, the 90-day cases. As such, AT&T does not take a position at this time on the questions set forth in the Procedural Order. However, the Commission should not interpret the absence of a challenge to the FCC's presumption of non-impairment as validation of the FCC's analysis. The ability of a CLEC to demonstrate impairment in the future should not be

viewed as waived.¹ AT&T's non-participation is also based on the Commission not making any decisions in the 90 day proceeding that would affect or be binding upon the mass market 9 month cases. Therefore, AT&T responds herein only to those questions relating to the 9 month proceeding.

1. What issues to the 90-day proceeding will need to be addressed as a result of the FCC's Order? Please describe any issues identified in detail.

2. Please provide substantive comments on the presumptive finding of no impairment for local circuit switching on high-capacity loops such as DS-1 for business customers. These substantive comments should include any information that you believe rebuts the presumptive finding of no impairment for not providing local circuit switching as a UNE on high-capacity loops such as DS-1 for business customers.

3. If there are any other issues that the Commission must resolve within the 90-day time frame, please provide substantive comment on those issues as well.

4. For the 90-day proceeding, what process and schedule should the Commission use to implement the FCC's Triennial Review Order, i.e., contested cases process, comment and workshop process or merely a paper comment process? If you believe that a contested case process is necessary, please identify any disputed issues of material fact that would need to be addresses in any evidentiary proceeding conducted by the Commission. Are some issues more time sensitive than others? Please identify any issues that are time sensitive and discuss your responses in detail.

¹ We concur with the policy conclusion reached by the FCC that "BOCs have an independent obligation, under section 271 (c)(2)(B), to provide access to certain network elements that are no longer subject to unbundling under section 251, and to do so at just and reasonable rates." (FCC Order at ¶ 652) As such, it is our view that Qwest is still required to offer DS-1 level switching to serve all customers under Section 271 (in those states where the RBOC has obtained authority to offer in-region interLATA services and desires to continue offering service) at just and reasonable rates determined, for intrastate use, by the appropriate state commission. FCC Order, ¶¶ 653-655.

5. For the issues in the 90-day proceeding, please describe what you believe is, or should be, the procedural relationship between the 90-day proceeding involving the enterprise market and the nine month proceeding for the “mass market.”

AT&T does not believe that there should be any procedural or substantive relationship between the 2 proceedings. The proceedings will involve very different issues and likely different parties. They should be conducted separately, and no determinations should be made in the 90 day proceeding that are binding on the 9 month proceeding.

6. Are any rule changes required to the Arizona Administrative Code as a result of the FCC’s Triennial Review Order? For the issues in the 90-day proceeding, are any rulemaking proceedings advisable as a result of the FCC’s Triennial Review Order?

An initial review of the Commission’s rules suggests that the following rules may need to be amended: R14-2-1111, R14-2-1306 and R14-2-1307.

7. Please comment on any other issues related to the 90-day proceeding you believe to be relevant to the ACC’s implementation of the FCC’s Triennial Review Order?

8. Should the Commission address all of the issues relating to the 90-day proceeding and 9 month proceedings within this docket?

Because of Arizona’s rules on *pro hoc vice* applications, it is burdensome on the parties to have to become parties to numerous dockets in front of the Commission. Therefore, AT&T recommends that the Commission either use this docket for the 9-month proceeding and open a new and separate docket for the 90-day proceeding, or bifurcate the issues and proceedings within this docket. Further, AT&T recommends that

bifurcated portions or phases of this docket be used for switching, loop and transport, and the bulk hot cut process, since all are likely to involve different issues and parties.

9. Should the Commission use the same process you identified in response to Question No. 4 in both the 90-day and nine month proceedings?

The FCC has delegated the state commissions differing roles in the mass market switching versus transport and loop impairment analysis. In the mass market switching setting, the FCC's Order directs state commissions to conduct a granular analysis of certain specified triggers.² Thus, the Commission should initiate a proceeding to conduct this investigation. In the transport and loop review, the Commission is only required to conduct a review of transport routes and customer loop locations for which some party has presented evidence that the route or loop location satisfies the triggers established by the FCC.³ As a result, the Commission need not initiate the 9 month loop/transport inquiry unless an ILEC submits an application designating specific transport routes or loop locations it contends meet the triggers. Alternatively, if the Commission determines it must initiate a proceeding, the incumbent LECs should be required to immediately identify the transport routes and/or customer loop locations it contends satisfy the FCC-established triggers.

The FCC's Order contemplates three separate types of proceedings will be conducted by state commissions during the 9 months following the Effective Date of the FCC Order.

A. Mass Market Switching. The "mass market" switching proceeding will focus on whether CLECs are impaired in Arizona markets without access to unbundled

² FCC Order, ¶¶ 486-524.

local switching to serve “mass market” customers. The Order states that the Commission is expected to define the relevant market for the “mass market” switching inquiry, determine the limits of what will be considered “mass market” versus “enterprise” customers, and analyze impairment based on a set of “triggers” and an analytical framework spelled out in the FCC Order.

B. Loop and Transport. The FCC called on state commissions to review requests that particular customer loop locations and transport routes should no longer be subject to the FCC’s national impairment finding after an ILEC submits evidence designating specific transport routes or loop locations it contends meet the triggers. The Order sets forth a set of “triggers” and related criteria to guide state determinations on when specific loop locations and transport routes should be “de-listed” as UNEs. The nature of this proceeding requires that, as a first step, ILECs identify the customer locations (for loops) and transport routes that they believe meet the FCC’s test for “de-listing.”⁴ The Commission should establish minimum rules of good faith pleading the ILEC must satisfy to identify loop locations and transport routes it proposes be de-listed. In this regard, the ILECs should be required to list only those customer locations/routes for which it has information that at least two non-ILEC providers serve a customer location (for loops) or that there are the *same* two collocated carriers at each end of a CO office pair. Otherwise, ILECs could challenge every customer loop location and transport route regardless of the likelihood the triggers would be met, and the

³ *Id.* at ¶¶ 339, 417.

⁴ See FCC Order ¶ 417 (“Unbundled DS1, DS3, and dark fiber transport will remain available in all locations until the state commission determines that unbundled transport at particular capacities in specific locations is no longer required. States that conduct this review *need only address routes for which there is relevant evidence in the proceeding that the route satisfies one of the triggers or the potential deployment analysis specified in this Part.*” (emphasis supplied) and ¶ 339 (similar language regarding loop analysis).

Commission conceivably could be obliged to rule for every loop location and route in Arizona. Given the strict time constraints associated with the loop/transport proceedings, a minimum pleading requirement for ILEC de-listing requests is vital the Commission's and the parties' ability to conduct these proceedings on the schedule mandated by the FCC's Order.

C. "Batch Hot Cut Process." The FCC Order contemplates a 9-month window for creation of a batch hot cut process. The FCC Order identifies shortcomings in ILEC hot cut processes as a major source of impairment justifying continued availability of the "mass market" local switching UNE. The FCC urges States to address hot cut process issues within 9 months of the Effective Date of the Order, but does not mandate a particular type of proceeding for developing hot cut processes.⁵ The proceeding contemplated by the FCC does not appear susceptible to traditional contested case or arbitration processes. Thus, the Commission may wish to consider a formal or informal regional approach to address the technical issues associated with the hot cut process. However, the Commission must individually review the rates to be charged in connection with the use of such a process and independently assure that the process is adequately implemented in the State, together with appropriate performance measurements and consequences.

With respect to procedure, AT&T recommends that the switching and loop and transport cases be conducted as contested cases, utilizing evidentiary hearings. As a part of this process, the Commission may wish to utilize panels of subject matter

⁵ *Id.* at ¶¶ 487-490.

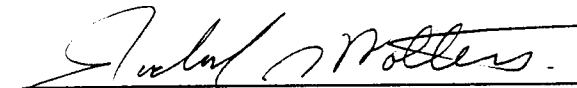
witnesses. In addition, it is critical that the Commission enter a Protective Order adequate to protect companies' highly sensitive information.

10. Please indicate in which of the proceedings you intend to actively participate.

All portions of the 9-month proceedings.

Submitted September 10, 2003.

**AT&T COMMUNICATIONS OF THE
MOUNTAIN STATES, INC. AND TCG
PHOENIX**

A handwritten signature in cursive script, appearing to read "Richard S. Wolters", is written over a horizontal line.

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CERTIFICATE OF SERVICE
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